

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	
ARM 12.6.1101, 12.6.1103, 12.6.1106,)	
12.6.1109, 12.6.1112, 12.6.1116,)	
12.6.1118, 12.6.1120, 12.6.1122,)	NOTICE OF PUBLIC HEARINGS ON
12.6.1124, 12.6.1125, 12.6.1126,)	PROPOSED AMENDMENT,
12.6.1127, 12.6.1128, 12.6.1130, the)	ADOPTION, AND REPEAL
adoption of NEW RULES I - V, and the)	
repeal of ARM 12.6.1119 and)	
12.6.1121 regarding falconry regulation)	
in Montana)	

TO: All Concerned Persons

1. On June 18, 2009 at 7:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 2 office located at 3201 Spurgin Road, Missoula, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

On June 22, 2009 at 7:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Region 4 office located at 4600 Giant Springs Road, Great Falls, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

On June 25, 2009 at 7:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Region 5 office located at 2300 Lake Elmo Drive, Billings, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than June 11, 2009, to advise us of the nature of the accommodation that you need. Please contact Stella Cureton, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail scureton@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.6.1101 DEFINITIONS ~~(1) The word "raptors" shall mean all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls. The following raptors shall not be used for falconry:~~

~~(a) those raptors listed in 87-5-205, MCA;~~

~~(b) those raptors listed in 50 CFR part 17 as endangered or threatened;~~

~~(c) those raptors of the order Strigiformes except for the great-horned owl (Bubo virginianus).~~ For purposes of this subchapter, the following definitions apply:

~~(2) (1)~~ "Bred in captivity" or "captive-bred" means raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

~~(3) (2)~~ "Commission" means the Fish, Wildlife and Parks Commission provided for in 2-15-3402, MCA.

~~(4) (3)~~ "Department" means the Department of Fish, Wildlife and Parks provided for in 2-15-3401, MCA.

~~(5) (4)~~ "Director" means the director of Fish, Wildlife and Parks provided for in 2-15-3401, MCA.

~~(6) (5) "Falconry" means the sport of taking quarry by means of a trained raptor~~ means caring for, training, and transporting raptors for the pursuit of wild game and the hunting of wild game with raptors. Falconry includes the taking of raptors from the wild.

~~(6) (5)~~ "Hacking" means the temporary release of a raptor held for falconry to the wild so that it must survive on its own.

~~(7) (6)~~ "Hybrid" means the offspring of birds listed as two or more distinct species in 50 C.F.R. 10.13 of subchapter B or offspring of birds recognized by ornithological authorities as two or more distinct species listed in 50 C.F.R. 10.13 subchapter B.

~~(8) (7)~~ "Imprint" means a bird that is hand raised in isolation from the sight of other raptors from two weeks of age until it is fully feathered.

~~(9) (8)~~ "Livestock depredation area" means a specific geographic location in which depredation by golden eagles has been recognized. The boundaries and duration of a livestock depredation area are declared by USDA Wildlife Services or by a state governor.

~~(10) (9)~~ "Raptor" means all birds of the order Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls. The following raptors shall not be used for falconry:

~~(a) (10)~~ (a) those raptors listed in 87-5-205, MCA; and

~~(b) (11)~~ (b) those raptors listed in 50 C.F.R. part 17 as endangered or threatened.

~~(7) (11)~~ "Service" means the Fish and Wildlife Service, U.S. Department of Interior.

~~(12) (12)~~ "Sponsor" means a master or general falconer with a valid permit who is at least 18 years old and has at least two years experience at the general falconer level.

~~(8) (13)~~ "Warden" means a state Montana fish, wildlife and parks game warden.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-205, MCA

12.6.1103 FALCONRY PERMIT CLASSES ~~(1) There are~~ The department issues three classes of permits.

~~(a) (1)~~ Apprentice class An apprentice permittee:

~~(i) (a)~~ a permittee under this class must be at least 44 12 years old;

(b) if under 18 years of age, a parent or legal guardian, who is legally responsible for falconry activities, must sign the application;

~~(ii) (c) a permittee under this class~~ must have a sponsor who holds a general or master falconry permit for the first two years in which an apprentice permit is held, regardless of age of permittee. A sponsor may not have more than three apprentices at any one time;

~~(iii) (d) a permittee may not~~ may possess more than only one raptor as described in 50 C.F.R. 21.29 (c)(3)(i)(E) and may not obtain more than one raptor for replacement during any 12-month period;

~~(iv) a permittee shall possess only the following raptors, which must be taken from the wild: an American kestrel (Falco sparverius) or a red-tailed hawk (Buteo jamaicensis).~~

(e) does not need to capture a wild raptor; a wild raptor can be transferred to the permittee by another falconry permittee. If the apprentice permittee takes a raptor from the wild, it must be less than one year of age;

(f) may not possess a raptor taken from the wild as a nestling;

(g) may not possess a bird that is imprinted on humans; and

(h) must have the raptor facilities pass inspection before a permit may be granted.

~~(b) (2) General class~~ A general class permittee:

~~(i) (a) a permittee under this class~~ must be at least ~~48~~ 16 years old;

(b) if under 18 years of age, a parent or legal guardian, who is legally responsible for falconry activities, must sign the application;

~~(ii) (c) a permittee~~ must possess and train or hunt with a raptor for portions of at least two seasons in the practice of falconry at the apprentice level ~~or its equivalent~~ and must be recommended by the sponsor;

~~(iii) (d) a permittee shall not~~ may possess more than two up to three raptors and shall not obtain more than two raptors for replacement birds during any 12-month period;

(e) may take and possess any species of Falconiform or Strigiform except a golden eagle, a bald eagle, a white-tailed eagle, or a Steller's sea-eagle; and

(f) may use captive-bred raptors and hybrids of the species permitted to possess.

~~(iv) a permittee shall not take, transport, or possess any golden eagle or any species listed as threatened or endangered in 50 CFR 17.11.~~

~~(c) (3) Master class~~ A master class permittee:

~~(i) (a) a permittee under this class~~ must have at least five years of experience in the practice of falconry at the general class level;

(b) may possess any number of captive-bred birds or hybrids of species considered native to North America provided they are used for the sport of falconry;

~~(ii) (c)~~ shall not possess more than three five wild raptors and shall not obtain more than two raptors taken from the wild for replacement birds during any 12-month period;

~~(iii) (d) a permittee~~ may not take from the wild any species listed as endangered in 50 C.F.R. 17.11, but may transport, or possess such species in accordance with said regulations;

(e) may take and possess any species of Falconiform or Strigiform except a

bald eagle;

(f) may take and possess a golden eagle, a white-tailed eagle, or a Steller's sea eagle only if meeting the qualifications set forth under (3)(h)(i);

(iv) a permittee may not take, transport, or possess any golden eagle for falconry purposes unless authorized in writing in accordance with appropriate federal regulations; and

(v) (g) a permittee shall not take from the wild in any 12-month period, as a part of the three-five-bird limitation, more than one raptor listed as threatened in 50 C.F.R. 17.11, and then only in accordance with those regulations; and

(h) may possess up to three eagles of the following species: golden eagle, white-tailed eagle, or Steller's sea eagle. The department must document the following before approving a request to possess an eagle to use in falconry:

(i) experience in handling large raptors, including information about species handled and the type and duration of the activity where the experience was gained; and

(ii) at least two letters of reference from people with experience handling and/or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), or great horned owls (*Bubo virginianus*). Each must contain a concise history of the author's experience with large raptors, which can include, but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter must also assess the applicant's ability to care for eagles and fly them in falconry.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-205, 87-5-206, MCA

12.6.1106 HANDLING EQUIPMENT (1) A permittee must have jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances for weighing raptors in the permittee's possession.

(1) The applicant must have the following items before he or she may obtain a permit:

(a) Jesses -- at least one pair of Alymeri jesses or similar type constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free; traditional one-piece jesses may be used on raptors when not being flown;

(b) leashes and swivels -- at least one strong swivel of acceptable falconry design;

(c) bath container -- at least one suitable container, two to six inches deep and wider than the length of the raptor for drinking and bathing for each raptor;

(d) outdoor perches -- at least one weathering area perch of an acceptable design for each raptor;

(e) weighing device -- a reliable scale or balance suitable for weighing the raptor(s) held and graduated to increments of not more than 1/2 ounce (15 gram).

(2) All facilities and equipment shall be kept at or above these standards at all times.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1109 EXAMINATION ~~(1) A permit will not be issued until the applicant has answered correctly at least 80% of the questions on a supervised examination administered by the department or a designated master falconer, relating to basic biology, care and handling of raptors, literature, laws, rules or other appropriate subject matter as approved by the service. Examinations will be administered on an "as needed" basis provided that any applicant failing to score 80% will only be allowed to retake the written examination at 60-day intervals. Applicants may not take the examination more than three times in one year. Applicants failing the written examination three times in one year will forfeit the \$25 application fee.~~

(1) Before an applicant is issued an apprentice permit he or she must correctly answer at least 80 percent of the questions on an examination administered by the department.

(2) The examination must cover care and handling of falconry raptors, federal and state laws and regulations relevant to falconry, and other appropriate subject matter.

(3) Any applicant failing to score 80 percent will only be allowed to retake the written examination at 30-day intervals. Applicants may not take the examination more than three times in one year.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1112 TAKING, POSSESSING, AND TRANSPORTING OF RAPTORS FOR FALCONRY ~~(1) Young raptors, not yet capable of flight (eyasses) may be taken from the wild only by a general or master falconer during the period from June 1 through July 15, each year.~~

~~(2) First-year (passage) raptors may be taken from the wild only during the period from September 19 through January 31.~~

~~(3) Notwithstanding, the preceding requirements, a marked or jessed raptor may be retrapped at any time.~~

~~(4) Only American kestrels (Falco sparverius) and great-horned owls (Bubo virginianus) may be taken when over one year old, except that any raptor other than an endangered or threatened species taken under a depredation (or special purpose) permit may be used for falconry by general and master falconers.~~

(1) A permittee may not intentionally capture a raptor species that their classification as a falconer does not allow them to possess. If a permittee captures such a bird, it must be released immediately.

(2) No more than two raptors may be taken from the wild each calendar year to use in falconry.

(a) Take of peregrine falcons from the wild is limited to the time period specified by commission rules. Take is limited to permittees that have received a peregrine take permit from the department and the conditions associated with that permit.

(b) Transfer of a bird taken from the wild to another permittee in the same calendar year of capture will count as one of the raptors allowed to be taken from the

wild that year for the permittee who captured the bird. It will not count as a capture by the recipient, though it will always be considered a wild bird.

(c) A general or master falconer may remove nestlings from a nest or aerie.

(d) Raptors may not be taken at any time or in any manner that violates any law of the state, tribe, or agency on whose land a permittee is trapping.

(e) A raptor taken from the wild must be reported by submitting a paper form 3-186A to the department. Reporting must be done at the first opportunity to do so, but no later than ten days after the capture of the bird.

(f) If a permittee who intends to possess a bird is present at the capture site, he or she is considered the person who removes the bird from the wild and is responsible for filing a 3-186A form reporting take of the bird from the wild even if another person captures the bird for the permittee.

(g) If a permittee is not at the immediate location where the bird is taken from the wild, the person who removes the bird from the wild must be a general or master falconer, and must report take of the bird. If that person then transfers the bird to the permittee, both must file 3-186A forms reporting the transaction at the first opportunity to do so, but no later than ten days after the transfer. The bird will count as one of the two raptors the person who took it from the wild is allowed to capture in any year. The bird will not count as a bird the permittee took from the wild. The person who takes the bird from the wild must report the take even if he or she promptly transfers the bird to the permittee.

(h) If a permittee has a long-term or permanent physical impairment that prevents the permittee from attending the capture of a species for falconry, a general or master falconer may capture a bird for the permittee. The permittee is then responsible for filing a 3-186A form reporting the take of the bird from the wild and the bird will count against the take of wild raptors that the permittee is allowed in any year.

(3) Other restrictions on taking raptors from the wild for falconry:

(a) A general or master falconer may take raptors less than one year of age from the wild. However, an American kestrel or great horned owl of any age may be taken from the wild.

(b) A master falconer authorized to possess golden eagles for use in falconry, may capture an immature or subadult golden eagle in a livestock or wildlife depredation area during the time the depredation area is in effect and only in compliance with regulations contained in 50 C.F.R. 21.29(e)(3)(iii).

(c) Recapture of a lost falconry bird can be done at anytime. Recapture of a wild bird is not considered to be taking a bird from the wild.

(d) Recapture of a raptor wearing falconry equipment or a captive-bred bird may be done at any time even if possession of that species is not allowed. The recaptured bird will not count against possession limit or the take from the wild limit. Recapture of the bird must be reported to the department no more than five working days after the recapture. The bird must be returned to the person who lost it, if that person may legally possess it. Disposition of a bird whose legal possession cannot be determined will be at the discretion of the department.

(e) A bird banded with a Federal Bird Banding Laboratory aluminum band may be taken from the wild except a banded peregrine falcon.

(f) At least one young must be left in the nest or aerie when taking a nestling.

(g) An apprentice falconer may not take a nestling from the wild.

(h) A general or master falconer with a valid federal endangered species permit and an endangered species permit from the department may take no more than one bird of a threatened species from the wild each year if the regulations in 50 C.F.R.21.17 allow it.

(4) If a raptor is injured due to falconer trapping efforts, there are two options for dealing with the injured bird:

(a) The bird may be reported as take by submitting a paper form 3-186A to the department at the first opportunity to do so, but no more than ten days after capture of the bird. The bird must be treated by a veterinarian or a permitted wildlife rehabilitator and the bird will count against the permittee's possession limit.

(b) The bird may be given directly to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee. It will not count against the permittee's allowed take or the number of raptors possessed.

(5) If a permittee acquires a raptor; transfers, rebands, or microchips a raptor; if a raptor is stolen; if a raptor is lost to the wild and not recovered within 30 days; or if a bird for falconry dies, the permittee must report the change within ten days by submitting a paper form 3-186A to the department.

(6) If a raptor is stolen, the theft must be reported to the department and to the fish and wildlife service regional law enforcement within ten days of the theft of the bird.

(7) A raptor of any age may be acquired directly from a rehabilitator at the discretion of the rehabilitator. A bird acquired from a rehabilitator:

(a) must be reported within ten days of the transaction by submitting a paper form 3-186A to the department.

(b) will count as one of the raptors the permittee is allowed to take from the wild that year.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-206, MCA

12.6.1116 FEATHERS (1) ~~Feathers that are molted, or those feathers from birds held in captivity that die, may be retained and exchanged by a permittee only for the purpose of repairing broken feathers (imping).~~

(1) A permittee may possess flight feathers for each species of raptor currently or previously in possession for the purpose of replacing a damaged feather with a molted feather (imping). Feathers for imping may be received from other permitted falconers, wildlife rehabilitators, or propagators in the United States. Feathers may not be bought, sold, or bartered.

(2) Feathers may be donated from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to have them or to any person exempt from the permit requirement under 50 C.F.R. 21.12.

(3) Except for primary or secondary flight feathers or retrices from a golden eagle, feathers that are molted or otherwise lost by a falconry bird are not required to be gathered. Feathers can be left where they fall, stored for imping, or destroyed. Molted flight feathers and retrices from a golden eagle must be collected for imping or sent to the National Eagle Repository at the following address: U.S. Fish and

Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal Building 128, Commerce City, Colorado 80022. The telephone number at the repository is 303-287-2110.

(4) If a permit expires or is revoked, all feathers of any species of falconry raptor except a golden eagle may be donated to any person or any institute exempt from the permit requirement under 50 C.F.R. 21.12 or authorized by permit to acquire and possess the feathers. Any feathers not donated must be burned or destroyed.

AUTH: 87-1-201, 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1118 ENFORCEMENT (1) An officer of the department may inspect the falconry permittee's raptors, records, facilities or equipment at any reasonable time. Falconry birds, facilities, equipment, and records may be inspected only in the presence of the permittee during business hours on any day of the week by department officials.

AUTH: 87-1-201, 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1120 FALCONRY PERMITS (1) The director may issue falconry permits in response to applications received on forms provided by the department, provided an applicant meets the requirements and otherwise complies with the provisions of this rule.

(a) Permits are valid for a period of three years or portion thereof, and shall expire on the date designated on the face of the permit unless amended or revoked. Permits are renewable.

(b) Only a person who is a resident of Montana as defined in section 87-2-102, MCA may apply for a permit under this rule.

(c) Applicants shall submit payment of a \$25150 state permit fee with the application, ~~together with a separate, additional check or money order made payable to "U.S. Fish and Wildlife Service" in the amount of \$25 as fee for the requisite federal falconry permit.~~

(2) The department may reinstate a lapsed falconry permit.

(a) If a permit has lapsed for fewer than five years, it may be reinstated at the level previously held if proof of certification at that level can be provided.

(b) If a permit has lapsed for five years or longer, an examination administered by the department must be taken and passed with a score of at least 80 percent to have a permit reinstated at the level previously held. Falconry facilities must also pass state inspection before a falconry bird may be possessed.

(3) The department will recognize valid falconry permits from other states while an individual is in the process of moving to Montana. Within 120 days of moving to Montana, the department must inspect falconry facilities. Once the department residency requirements are satisfied, the department will recognize time spent practicing falconry in other service-approved states and will grant permits at the same class as permits previously held.

(4) The department may grant new residents to the United States with experience in falconry a permit to practice falconry in Montana and allow them to possess a raptor for use in falconry at an appropriate level after:

(a) taking and passing the falconry examination with at least an 80 percent score to demonstrate knowledge of falconry laws and regulations;

(b) providing documentation of experience with falconry in the applicant's country of origin;

(c) construction and inspection of falconry facilities determined by the department to be in compliance with ARM 12.6.1122; and

(d) a determination by the department of the appropriate level of falconry for which the applicant is qualified.

(5) A falconer must have permits or legible copies of them in their possession if they are not at the location of their falconry facilities and are trapping, transporting, working with, or flying falconry raptors.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1122 FACILITIES ~~(1) The primary consideration for raptor housing facilities, whether indoors (mews) or outdoors (weather area), is protection from the environment, predators, and undue disturbance. The applicant shall have one or both of the following facilities:~~

~~(a) Indoor facilities (mews) shall be large enough to allow easy access for caring for the raptors housed in the facility. If more than one raptor is to be kept in the mews, raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body and a secure door that can be easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.~~

~~(b) Outdoor facilities (weathering area) shall be fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators except that perches more than 62 feet high need not be covered or roofed. The enclosed area shall be large enough to insure the birds cannot strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.~~

(1) Permittees must keep all raptors held under their falconry permit in humane and healthful conditions.

(2) Whether indoors (mews) or outdoors (weathering area), raptor facilities must protect raptors from the environment, predators, and domestic animals. Permittees are responsible for the maintenance, security, and protection of raptors they possess under a permit.

(3) Permittees must have raptor housing facilities approved by the department before obtaining a bird to use in falconry. The department requires that the permittee have either an indoor or outdoor facility or both. A representative of the department, or its designee, must certify that facilities and equipment meet the following standards:

- (a) All facilities must protect raptors from predators and domestic animals.
- (b) The facility must have a suitable perch for each raptor, at least one opening for sunlight, and must provide a healthy environment for raptors.
- (c) Untethered raptors may be housed together if they are compatible with each other.
- (d) Each raptor must have an area large enough to allow it to fly if it is untethered or, if tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.
- (e) In most cases, each raptor should have a pan of clean water available. However, at the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.
- (f) An indoor facility must be large enough to allow easy access for the care and feeding of raptors.
 - (i) If raptors are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor housed in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.
 - (ii) Acceptable indoor facilities include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers.
- (g) A falconry raptor or raptors may be kept inside the permittee's place of residence if a suitable perch or perches are provided. If raptors are housed inside the home, windows or other openings of the structure do not need to be modified. Raptors kept in the home must be tethered when they are not being moved in or out of the location in which they are kept.
- (h) An outdoor facility must be totally enclosed, and may be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.
- (i) The facility must be covered and have at least a covered perch to protect a raptor from predators and weather.
 - (ii) The facility must be large enough to ensure that the birds cannot strike the enclosure when flying from the perch.
- (4) Falconry raptors may be kept outside in the open if they are under watch, such as by the permittee or a family member at any location or, for example, by a designated individual in a weathering yard at a falconry meet.
- (5) A permittee must inform the department within five business days if there is a change in the location of their facilities.
- (6) Falconry facilities on property not owned by the permittee:
 - (a) must meet the standards in this rule; and
 - (b) the permittee must submit to the department a signed and dated statement showing that the permittee and the property owner agree that the falconry facilities, equipment, and raptors may be inspected without advance notice by the department at any reasonable time of day. Inspections must be in the presence of the permittee.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1124 MARKING (1) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*) taken, possessed or transported shall be banded at all times by either a numbered seamless band or with a permanent, nonreusable numbered band issued by the department or the service. No raptor taken from the wild may be banded with a seamless numbered band.

(2) Any gyrfalcon taken from the wild shall be reported to the department within five days of taking.

(3) Loss or removal of any band shall be reported to the issuing office within five working days of the loss. The lost band shall be replaced by a permanent, nonreusable numbered band supplied by the department or by the service. A federal form 3-186A shall be filed in accordance with the instructions on the form reporting the loss of the banding and rebanding.

(1) If a goshawk, Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) is taken from the wild, acquired from a rehabilitator, or from another falconer, the raptor must be banded with a permanent, nonreusable, numbered service leg band provided by the department. An International Organization for Standardization (ISO) compliant (134.2 kHz) microchip may be purchased and implanted in the bird in lieu of a band. Contact the department for information on obtaining and disposing of bands. Within ten days from the day on which the raptor is taken from the wild, it must be reported, including band number and/or microchip information, by submitting a paper form 3-186A to the department. An appropriate band may be requested from the department in advance of any effort to capture a raptor.

(2) A raptor bred in captivity must be banded with a seamless metal band (see 50 C.F.R. 21.30) or have an implanted ISO-compliant (134.2 kHz) microchip. If a seamless band is removed or lost, a request for a replacement service nonreusable band must be requested from the department and the required information must be reported immediately upon rebanding or microchipping the raptor by submitting a paper form 3-186A to the department. A band that is removed or lost, must be replaced or an ISO-compliant (134.2 kHz) microchip must be implanted in the bird and the microchip information reported by submitting a paper form 3-186A to the department.

(3) If the band must be removed or is lost from a raptor, the loss of the band must be reported within five days, and then do at least one of the following:

(a) request a service nonreusable band from the department and submit the required information immediately upon rebanding the raptor by submitting a paper form 3-186A to the department; or

(b) purchase and implant an ISO-compliant (134.2 kHz) microchip in the bird and report the microchip information by submitting a 3-186A form to the department.

(4) A band must not be altered, defaced, or counterfeit. The rear tab of a band on a raptor taken from the wild may be removed and an imperfect surface may be smoothed if the integrity of the band or the numbering is not affected.

(5) The department may provide an exemption if health or injury problems caused by the band are documented. A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor. If the bird is a wild

goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, the band must be replaced with an ISO-compliant microchip that the service will supply to the department. The service will not provide a microchip for a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon unless it has been demonstrated that a band causes an injury or a health problem for the bird.

(6) A raptor removed from the wild may not be banded with a seamless numbered band.

(7) Copies of all electronic database submissions documenting take, transfer, loss, rebanding, or microchipping of each falconry raptor must be kept until five years after the bird has been transferred, lost, or died.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1125 TEMPORARY HOLDING OF RAPTORS (1) A legally possessed raptor may be temporarily held by another person authorized to possess raptors if a form 3-186A and a dated and signed statement authorizing temporary possession accompany the raptor.

(2) A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 days.

(1) A raptor may be housed temporarily for up to 120 consecutive calendar days if the bird has a suitable perch and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(2) A permittee's raptor may be cared for by another falconry permittee for up to 120 consecutive calendar days. The permittee caring for the raptor must have a signed and dated statement authorizing temporary possession, plus a copy of form 3-186A showing they are the possessor of each of the raptors. The statement must include information about the time period of care and the allowable activities to be done with the bird.

(3) The raptors will remain on the original falconry permit and will not be counted against the possession limit of the person caring for the raptors.

(4) If the person caring for the raptors holds the appropriate level falconry permit, the raptors may be flown in an authorized manner, including hunting.

(5) The temporary care of the raptors may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency. The department will consider such instances on a case-by-case basis.

(6) Someone who does not have a falconry permit may care for falconry birds at the permittee's facilities for up to 45 consecutive calendar days.

(a) The raptors will remain on the falconry permit;

(b) the raptors must remain in the facilities;

(c) this care may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency; and

(d) the person(s) caring for the raptors may not fly them for any reason.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1126 TRANSFER OF RAPTORS (1) Wild raptors held by a permittee may be permanently transferred to a resident authorized to possess raptors for falconry purposes provided:

(a) the permittees submit a federal form 3-186A ~~in accordance with the reporting requirements of ARM 12.6.1103;~~

(b) no money, barter or any other consideration is involved in the transfer.

(2) Wild raptors held by a permittee may be permanently transferred to a nonresident authorized to possess raptors for falconry purposes provided:

(a) the permittees submit a federal form 3-186A ~~in accordance with ARM 12.6.1103 reporting requirements;~~

(b) an export permit has been issued by the department in advance of export from the state; and

~~(c) the nonresident recipient resides in a state which provides privileges to Montana residents to conduct permitted activities comparable to activities permitted in Montana; and~~

~~(d) (c)~~ no money, barter, or any other consideration is involved in the transfer. The species and number of raptors transferred, held, or replaced is limited in accordance with the permit classes section of this regulation. ~~(ARM 12.6.1103)~~

(3) Captive-bred raptors held by a permittee may be permanently transferred to residents or nonresidents authorized to possess raptors, provided the permittees submit a federal form 3-186A in accordance with the reporting requirements of ARM 12.6.1103.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1127 TEMPORARY TRANSPORT (1) Holders of Montana falconry permits may temporarily remove raptors from Montana and return them to the state, provided all necessary permits or licenses are obtained from the states or other legal authority into which the raptors are transported.

(2) A falconer may transport a raptor if a suitable perch and protection from extreme temperatures, wind, and excessive disturbance are provided. A "giant hood" or similar container is acceptable for transporting or housing a raptor.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1128 SALE OF RAPTORS (1) ~~A falconry permittee may not sell, purchase, barter, or offer to sell, purchase or barter any raptor unless the raptor is marked on its metatarsus by a seamless numbered band supplied by the department or the service. A permittee:~~

(a) may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands or ISO compliant microchips to other permittees who are authorized to possess the raptors.

(b) may not purchase, sell, trade, or barter wild raptors. Wild raptors may only be transferred.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1130 RELEASE OF RAPTORS ~~(1) A falconry permittee shall obtain written authorization from the director before any species not indigenous to Montana is intentionally released to the wild, at which time the marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released bird which is indigenous to Montana shall also be removed and surrendered to the department. A standard federal bird band shall be attached to any such bird by the department or an authorized federal bird bander whenever practical.~~

(1) A raptor not native to Montana or a hybrid raptor may not be released into the wild, but may be transferred to another falconry permittee.

(2) A permittee must have permission from the department to release a captive-bred raptor that is a native species to Montana.

(a) The raptor must be hacked to the wild at an appropriate time of year and location;

(b) the falconry band must be removed; and

(c) the release must be reported by submitting a paper form 3-186A to the department.

(3) A raptor taken from the wild that is a native species to Montana may be released.

(a) The raptor must be released to the wild at an appropriate time of year and location;

(b) the falconry band must be removed; and

(c) the release must be reported by submitting a paper form 3-186A to the department.

(4) Hybrid raptors may not be permanently released to the wild.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

4. The rules as proposed to be adopted provide as follows:

NEW RULE I FLYING A HYBRID RAPTOR (1) When flown free, a hybrid raptor must have at least two attached radio transmitters to locate the bird.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

NEW RULE II DISPOSITION OF CARCASSES OF FALCONRY BIRDS THAT DIE (1) The carcass of a golden eagle held for falconry, including all feathers, talons, and other parts must be sent to the National Eagle Repository.

(2) The body or feathers of any other species of falconry raptor may be donated to any person or institution exempt under 50 C.F.R. 21.12 or authorized by permit to acquire and possess such parts or feathers.

(3) If a falconry bird was banded or microchipped prior to its death, a permittee who possessed the bird may keep the body of any falconry raptor except that of a golden eagle. The permittee may keep the body so that the feathers are available for imping or may have the body mounted by a taxidermist. The permittee may use the mount in giving conservation education programs. If the bird was banded, the band must be left on the body. If the bird has an implanted microchip, the microchip must be left in place.

(4) If a permittee does not wish to donate or keep the body or feathers, the body must be burned, buried, or otherwise destroyed within ten days of the death of the bird or after final examination by a veterinarian to determine cause of death. Carcasses of euthanized raptors could pose a risk of secondary poisoning of eagles and other scavengers. Appropriate precautions must be taken to avoid such poisonings.

(5) If a permittee does not donate the bird body or feathers or have the body mounted by a taxidermist, the flight feathers may be possessed from the bird for as long as the permittee has a valid falconry permit. The permittee may not buy, sell, or barter the feathers and must keep the paperwork documenting acquisition of the bird.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

NEW RULE III UNINTENTIONAL TAKE OF PREY (1) If prey is killed by a falconry bird without the permittee's intent, including an animal taken outside of a regular hunting season, the permittee:

- (a) may allow the falconry bird to feed on the animal;
- (b) may not take possession of the animal; and
- (c) must report take of any federally listed threatened or endangered species to the service field office in which the kill occurred.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

NEW RULE IV RAPTORS USED FOR EDUCATION (1) A general or master falconer may use a bird in conservation education programs presented in public venues.

- (a) A federal education permit is not needed to conduct conservation education activities using a falconry raptor.
- (b) An apprentice falconer may present conservation programs under the supervision of a general or master falconer.
- (c) The bird must be used primarily for falconry.
- (d) A fee may be charged for the presentation of a conservation education program. The fee may not exceed the amount required to recoup the costs of the presentation.
- (e) Conservation education programs must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

Presentations that do not address falconry and conservation education may not be presented.

(f) The permittee is responsible for all liability associated with conservation education activities.

(2) Photography, filming, or other such uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds, is allowable. The permittee may not be paid for these activities.

(a) Falconry raptors may not be used to make movies, commercials, or in other commercial ventures that are not related to falconry.

(b) Falconry raptors may not be used for entertainment; for advertisements; promotion or endorsement of any products, merchandise, goods or services; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(3) A general or master falconer may assist a permitted migratory bird rehabilitator to condition raptors in preparation for release to the wild. A rehabilitating bird may be kept at the falconer's facilities.

(a) The rehabilitator must provide a letter or form that identifies the bird and explains that the falconer is assisting in the raptor's rehabilitation.

(b) The falconer's facilities do not need to meet the standards and are not subject to inspection for compliance of the standards of a rehabilitator facility.

(c) A raptor possessed for the purpose of rehabilitation does not need to be added to the falconry permit. It will remain under the permit of the rehabilitator.

(d) If a raptor cannot be permanently released to the wild, it must be returned to the rehabilitator within 180 days unless the department authorizes an extension or the raptor is transferred to another permit.

(e) All raptors able to be released into wild must be released or returned to the rehabilitator for release.

(4) A master falconer may conduct abatement activities with a bird or birds possessed for falconry, with a special purpose abatement permit. With a special purpose abatement permit, payment may be received for providing abatement services. A general falconer may conduct abatement activities only as a subpermittee of the holder of the abatement permit.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

NEW RULE V TRANSFER OF RAPTORS TO ANOTHER TYPE OF PERMIT

(1) Under some circumstances a permittee may transfer a raptor to another permit type if the recipient of the bird, including the permittee, possesses the necessary permits for the other activity.

(2) A permittee may transfer a wild-caught falconry bird to a raptor propagation permit after the bird has been used in falconry for at least two years, except one year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel. Upon transfer, a copy of form 3-186A documenting acquisition of

the bird by the propagator must be provided to the federal migratory bird permit office that administers the propagation permit. The bird must be banded with a permanent, nonreusable, numbered band issued by the department.

(3) Raptors held under a falconry permit may be used for captive propagation if the person overseeing the propagation has the necessary propagation permits. The raptor does not need to be transferred from the falconry permit if it is used for fewer than eight months in a year in captive propagation. If used more than eight months, the bird must be permanently transferred to the propagation permit. The bird must then be banded with a permanent, nonreusable, numbered band issued by the department.

(4) A permittee may transfer a wild-caught bird to another permit type in less than two years, except one year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel if the bird has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry.

(a) When the bird is transferred, a copy of form 3-186A documenting acquisition of the bird must be provided to the federal migratory bird permit office that administers the other permit type; and

(b) a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry must be provided to the federal migratory bird permits office that administers the other permit type.

(5) Captive-bred falconry raptors may be transferred to another type of permit if the holder of the other permit type is authorized to possess the bird. Within ten days, the transfer must be reported by submitting a standard paper form 3-186A to the department.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

5. The rules proposed to be repealed are as follows:

12.6.1119 PERMIT REQUIREMENTS

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1121 FACILITIES AND EQUIPMENT

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

REASONABLE NECESSITY: Falconry has been regulated by both the United States Fish and Wildlife Service (service) and the commission since the 1970s. The service published new federal regulations in October 2008 eliminating the requirement of the federal permit to practice falconry and adding a provision allowing the service to approve and certify falconry regulations adopted by the states.

Montana is proposing the amendment, adoption, and repeal of the above-stated rules to comply with the new federal regulations and to allow certification of Montana's falconry program.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Bette Moe, Fish, Wildlife and Parks, 1420 East 6th Avenue, PO Box 200701, Helena, MT 59624-0701; fax (406) 444-7894; e-mail bmoe@mt.gov, and must be received no later than July 2, 2009.

7. Jessica Fitzpatrick, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearings.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Shane Colton
Shane Colton, Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State May 18, 2009